

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rapidwave, LLC	)	File No: EB-10-DV-0413
	)	NAL/Acct. No.: 201132800003
Saratoga Springs, Utah	)	FRN: 0015337108
	)	

**FORFEITURE ORDER**

**Adopted: February 7, 2014**

**Released: February 7, 2014**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twenty thousand dollars (\$20,000) to Rapidwave, LLC (Rapidwave), an operator of an Unlicensed National Information Infrastructure (U-NII) transmission systems in Saratoga Springs, Utah, for willful and repeated violation of Sections 301 and 302(b) of the Communications Act of 1934, as amended, (Act)<sup>1</sup> and Sections 15.1(b) and 15.1(c) of the Commission's rules ("Rules").<sup>2</sup> The violations involved Rapidwave's operation of an intentional radiator not in accordance with Part 15 of the Rules<sup>3</sup> and the device's Equipment Authorization.<sup>4</sup>

**II. BACKGROUND**

2. On July 28, 2011, the Enforcement Bureau (Bureau) issued a Notice of Apparent Liability for Forfeiture and Order (NAL)<sup>5</sup> to Rapidwave for its operation of an Unlicensed National Information Infrastructure (U-NII) device on a frequency for which the device was not authorized and without a license. As discussed in detail in the NAL in this case,<sup>6</sup> on October 27, 2010 and October 28, 2010, while searching for the source of interference to the Federal Aviation Administration's (FAA) Terminal Doppler Weather Radar (TDWR) serving the Salt Lake City International airport, agents from the Bureau's Denver Office (Denver Office) used direction-finding techniques to determine that radio emissions on frequency 5600 MHz emanated from Rapidwave's U-NII transmitter, a Ubiquiti Networks XtremeRange5 transceiver,<sup>7</sup>

<sup>1</sup> 47 U.S.C. §§ 301, 302a(b).

<sup>2</sup> 47 C.F.R. § 15.1(b), (c).

<sup>3</sup> 47 C.F.R. §§ 15.1 *et seq.*

<sup>4</sup> 47 C.F.R. §§ 15.1, 15.407.

<sup>5</sup> *Rapidwave, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 10678 (Enf. Bur. 2011) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

<sup>6</sup> See 26 FCC Rcd at 10678–10680.

<sup>7</sup> The device has FCC ID SWX-XR5 (Ubiquiti XtremeRange5). Ubiquiti Networks, Inc. was issued a Grant of Equipment Authorization for the Ubiquiti XtremeRange5 by MET Laboratories, Inc., under the authority of the FCC, on February 16, 2007.

located at the Lake Mountain communications site is Sarasota Springs, Utah. The Ubiquiti XtremeRange5 model is certified for use as a Part 15 intentional radiator only in the 5745.0 - 5825.0 MHz band and is not certified as a U-NII intentional radiator.<sup>8</sup> The device also was not operating with Dynamic Frequency Selection (DFS), a functionality which allows U-NII transmitters operating in the 5.25-5.35 GHz and 5.47-5.725 GHz bands to detect the presence of FAA radar systems and avoid co-channel operations with radar systems.<sup>9</sup> Rapidwave submitted a response to the *NAL* requesting cancellation or reduction of the proposed \$25,000 forfeiture,<sup>10</sup> because (1) the *NAL*'s upward adjustment is excessive and unwarranted;<sup>11</sup> and (2) the *NAL* failed to give proper weight to the downward adjustment criteria, including Rapidwave's inability to pay the forfeiture,<sup>12</sup> its low degree of culpability<sup>13</sup> and its history of no prior offenses.<sup>14</sup>

### III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>15</sup> Section 1.80 of the Rules,<sup>16</sup> and the *Forfeiture Policy Statement*.<sup>17</sup> In examining Rapidwave's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>18</sup> As discussed below, we have considered Rapidwave's response in light of these statutory factors, and find that a reduction of the forfeiture based on its history of compliance is justified.

<sup>8</sup> 47 C.F.R. § 15.403(s) (defining U-NII devices as "[i]ntentional radiators operating in the frequency bands 5.15-5.35 GHz and 5.470-5.825 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions."). Although Rapidwave's device was not authorized to operate in the U-NII bands, it is subject to the U-NII rules (47 C.F.R. 15.401-15.407) because Rapidwave operated it as U-NII device on a U-NII frequency.

<sup>9</sup> See 47 C.F.R. § 15.407(h)(2). FCC Enforcement Advisory, TDWR and U-NII Devices, DA 12-459 (Sept. 27, 2012); Memorandum from Julius Knapp, Chief, FCC Office of Engineering and Technology, and P. Michele Ellison, Chief, FCC Enforcement Bureau, to Manufacturers and Operators of Unlicensed 5 GHz Outdoor Network Equipment Re: Elimination of Interference to Terminal Doppler Weather Radar (TDWR) (dated July 27, 2010), available at <http://www.fcc.gov/encyclopedia/weather-radar-interference-enforcement>. Because this device is not authorized to be used on the 5.25 – 5.35 GHz and 5.47 – 5.725 GHz frequency bands, the Rules do not require it to have DFS functionality when manufactured. Devices operating on the 5.25 – 5.35 GHz and 5.47 – 5.725 GHz frequency bands, however, must have DFS functionality.

<sup>10</sup> Response of Rapidwave (Aug. 29, 2011 ) (on file in EB-10-DV-0413) (*Response*). Rapidwave captions its *Response* as "Petition for Reconsideration and Request for Cancellation or Reduction of Proposed Forfeiture," however, as it is filed in response to the *NAL*, we will treat it as a response consistent with Section 1.80(f)(3) of the Rules. 47 C.F.R. § 180(f)(3). See *NAL*, 26 FCC Rcd at 10684. We note that Rapidwave does not object to, and has complied with, the directive in the *NAL* ordering Rapidwave to submit a written statement, under penalty of perjury, stating that Rapidwave is now operating its U-NII devices in compliance with their Equipment Authorizations and the Rules. See *NAL*, 26 FCC Rcd at 10683.

<sup>11</sup> See *Response* at 5–7.

<sup>12</sup> See *id.* at 8.

<sup>13</sup> See *id.* at 9.

<sup>14</sup> See *id.*

<sup>15</sup> 47 U.S.C. § 503(b).

<sup>16</sup> 47 C.F.R. § 1.80.

<sup>17</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

<sup>18</sup> 47 U.S.C. § 503(b)(2)(E).

4. We find that the evidence supports the Bureau's findings that, on October 27 and October 28, 2010, Rapidwave operated its Ubiquiti XtremeRange5 transmitter on frequencies for which that device was not certified, and without DFS functionality. Rapidwave does not dispute these findings<sup>19</sup> but does object to the amount of the proposed forfeiture, arguing that the upward adjustment of \$10,000 for Rapidwave's apparent violation of Section 301 of the Act and Section 15.1(b) of the Rules is excessive because Rapidwave operated only one device. Rapidwave argues that the Bureau has proposed the same upward adjustment against operators of multiple devices and that this violates the requirement that the Commission "treat similarly situated parties in the same manner and to provide an adequate explanation if it does not do so."<sup>20</sup> We find that the Bureau has generally added an upward adjustment of \$10,000 to forfeitures proposed against U-NII operators that have apparently violated Section 301 of the Act and Section 15.1(b) of the Rules.<sup>21</sup> This adjustment has been proposed whether the U-NII operator was operating one device or multiple devices for the stated reason, in each case, that the operation of the device or devices was causing interference to an FAA TDWR radar system at a nearby airport.<sup>22</sup> Consequently, we see no error in proposing such an upward adjustment concerning Rapidwave's operations.

5. Rapidwave also argues that the Bureau failed to give proper weight to the downward adjustment criteria, including Rapidwave's inability to pay the forfeiture,<sup>23</sup> its low degree of culpability,<sup>24</sup> and its history of no prior offenses.<sup>25</sup> With regard to an individual or entity's inability to pay claim, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.<sup>26</sup> Based on the financial documents provided by Rapidwave, we find no basis to reduce the

<sup>19</sup> See *Response at Attachment A*, Declaration of Sterling Jacobson, Principal Owner of Rapidwave, LLC.

<sup>20</sup> *Response at 6*. Rapidwave cites to *Melody Music, Inc. v. Federal Communications Commission*, 345 F.2d 730 (D.C. Cir. 1965) (the Commission's failure to explain decision denying a renewal application for a broadcast station with simplicity and clarity required reversal and that on remand the Commission would have to explain its reasons and do more than enumerate differences between the applicant's case and other cases).

<sup>21</sup> See, e.g., *Utah Broadband*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 1419 (Enf. Bur. 2011) (*Utah Broadband*) (forfeiture paid); *Sling Broadband, LLC*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 10686 (Enf. Bur. 2011) (*Sling Broadband*) (forfeiture assessed in Forfeiture Order 26 FCC Rcd 13062 (Enf. Bur. 2011)); *AT&T, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 1894 (Enf. Bur. 2011) (*AT&T, Inc.*) (forfeiture assessed in Forfeiture Order 27 FCC Rcd 10803 (Enf. Bur. 2012)); *Ayustar Corporation*, Notice of Apparent Liability for Forfeiture and Order, 26 FCC Rcd 10693 (Enf. Bur. 2011) (*Ayustar*), Order and Consent Decree, DA 13-2080, 2013 WL 6069461 (Enf. Bur. Nov. 18, 2013).

<sup>22</sup> See *Utah Broadband*, 26 FCC Rcd at 1424 (proposing upward adjustment of \$10,000 for unauthorized operation of two transceivers causing interference to the FAA's TDWR radar system at the Salt Lake City International Airport); *Sling Broadband*, 26 FCC Rcd at 10690 (proposing upward adjustment of \$10,000 for unauthorized operation of four transceivers, with one transceiver causing interference to the FAA's TDWR radar system at the Fort Lauderdale – Hollywood International Airport); *AT&T, Inc.*, 26 FCC Rcd at 1897 (proposing upward adjustment of \$10,000 for unauthorized operation of one transceiver causing interference to the FAA's TDWR radar system at the San Juan International Airport and to ensure that the forfeiture liability is not simply a cost of doing business for a large or highly profitable company); *Ayustar*, 26 FCC Rcd at 10696 (proposing upward adjustment of \$10,000 for unauthorized operation of one transceiver causing interference to the FAA's TDWR radar system at the San Juan International Airport).

<sup>23</sup> See *Response at 8*.

<sup>24</sup> See *id.* at 9.

<sup>25</sup> See *id.*

<sup>26</sup> See *PJB Communications of Virginia, Inc.*, Forfeiture Order, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, Forfeiture Order, 15 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, Memorandum Opinion and Order, 15 FCC Rcd 8640 (2000) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

proposed forfeiture based on inability to pay. Rapidwave's culpability is clear as it admits to operating the device at issue on unauthorized frequencies and without DFS capability and does not dispute that its operations caused interference to the FAA's TDWR radar system at the Salt Lake City International Airport. We do, however, agree with Rapidwave regarding its history of compliance with the Commission's rules.<sup>27</sup> We have reviewed our records and found no violations prior to those at issue here today. Thus, we conclude that a reduction in forfeiture in the amount of \$5,000 is warranted.

#### IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, Rapidwave, LLC, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Sections 301 and 302(b) of the Communications Act and Section 15.1(b) and 15.1(c) of the Commission's rules.<sup>28</sup>

7. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.<sup>29</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.<sup>30</sup> Rapidwave, LLC, shall send electronic notification of payment to [WR-Response@fcc.gov](mailto:WR-Response@fcc.gov) on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>31</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

<sup>27</sup> See 47 C.F.R. § 1.80 (b)(4) note (stating that history of overall compliance is a downward adjustment criteria for Section 503 forfeitures).

<sup>28</sup> 47 U.S.C. §§ 301, 302a(b), 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4), 15.1(b), 15.1(c).

<sup>29</sup> 47 C.F.R. § 1.80.

<sup>30</sup> 47 U.S.C. § 504(a).

<sup>31</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

8. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>32</sup> If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

9. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by both First Class and Certified Mail, Return Receipt Requested, to Rapidwave, LLC, at 1304 North Redwood Road, # 131, Saratoga Springs, Utah, 84045, and to its counsel, Stephen E. Coran, Rini Coran, PC, 1140 19<sup>th</sup> Street, NW, Suite 600, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief, Enforcement Bureau

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<sup>32</sup> See 47 C.F.R. § 1.1914.